

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

REGINALDO GARCIA ALMAZAN,
Petitioner.

No. 2 CA-CR 2019-0265-PR
Filed August 5, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Petition for Review from the Superior Court in Pima County
No. CR20044888002
The Honorable D. Douglas Metcalf, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

DM Cantor, Phoenix
By David Michael Cantor and Sabra Barnett
Counsel for Petitioner

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MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

ECKERSTROM, Judge:

¶1 Petitioner Reginaldo Almazan seeks review of the trial court’s order denying relief on his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P.¹ “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4 (App. 2007). Almazan has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Almazan was convicted of three counts of kidnapping, four counts of armed robbery, two counts of aggravated robbery, and one count each of aggravated assault, theft of a means of transportation, theft by controlling stolen property, and burglary in the first degree. The trial court sentenced him to concurrent and consecutive prison terms totaling 31.5 years. This court affirmed his convictions and sentences on appeal and denied relief on a consolidated petition for post-conviction relief. *State v. Garcia Almazan*, Nos. 2 CA-CR 2005-0412, 2 CA-CR 2007-0386-PR (Ariz. App. Nov. 7, 2008) (consol. mem. decision). Almazan subsequently sought and was denied relief in 2014 and 2016.

¶3 In June 2018, Almazan again sought post-conviction relief, raising claims of ineffective assistance of counsel and newly discovered evidence. Specifically, he contended counsel had been ineffective by having an investigator working on his case who also “worked in the same firm and under the same license” as an investigator for Almazan’s

¹ Our supreme court amended the post-conviction relief rules, effective January 1, 2020. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). “Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.” *State v. Mendoza*, No. 2 CA-CR 2019-0281-PR, n.1, 2020 WL 3055826 (Ariz. Ct. App. June 9, 2020) (“amendments apply to all cases pending on the effective date unless a court determines that ‘applying the rule or amendment would be infeasible or work an injustice’” (quoting Ariz. Sup. Ct. Order R-19-0012)).

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codefendant. He argued that the discovery of this conflict was newly discovered evidence that entitled him to relief. Following an evidentiary hearing the trial court denied relief, rejecting the state's argument that the claim was precluded, but finding Almazan had not shown he was prejudiced by any ineffectiveness.

¶4 On review, Almazan argues the trial court abused its discretion because it relied on authority that a party's failure to produce a material witness created a presumption that the witness's testimony would be unfavorable, it did not grant him a continuance to call the investigators in question to testify, and it required him to establish prejudice despite his claim that counsel had an actual conflict. This court is "obliged to affirm [a] trial court's ruling if [the] result [is] legally correct for any reason." *State v. Lopez*, 234 Ariz. 513, ¶ 10 (App. 2014).

¶5 Rule 32.1(e) does not contemplate a claim of newly discovered evidence of ineffective assistance of counsel such as those presented here. Instead, that rule is limited to "newly discovered material facts . . . [that] probably would have changed the judgment or sentence." Ariz. R. Crim. P. 32.1(e); see *State v. Amaral*, 239 Ariz. 217, ¶ 9 (2016) (listing five requirements for claim of newly discovered evidence); cf. *United States v. Hanoum*, 33 F.3d 1128, 1130-31 (9th Cir. 1994) (claim of "newly discovered evidence" under Rule 33, Fed. R. Crim. P., "limited to where the newly discovered evidence relates to the elements of the crime charged"). A claim of ineffective assistance of counsel falls under Rule 32.1(a), see *State v. Petty*, 225 Ariz. 369, ¶ 11 (App. 2010), and is precluded and untimely in this successive proceeding, see Ariz. R. Crim. P. 32.2(a), 32.4(a)(3)(A). The trial court therefore could have properly denied relief solely on that basis. Cf. Ariz. R. Crim. P. 32.2(b) (court at any time "may determine . . . that an issue is precluded").

¶6 Thus, although we grant the petition for review, we deny relief.